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BULLETIN NO.

01-1

Date: **May 2001**

Subject: **Railroad Facilities and
Superfund Sites**

Reference: **N.J.A.C. 5:23-2.2**

Questions have arisen about whether a local enforcing agency has the authority to issue permits and conduct inspections on certain federally regulated facilities and construction projects.

Direction has now been given and a general standard has been set. The local enforcing agency is not able to require permits, fees, and Certificates of Occupancy (COs). However, the local enforcing agency is able to request construction documents and perform inspections. When undertaking an activity that would require a permit when undertaken by another entity, upon request, the railroad must provide construction documents and must also provide access for inspections. The project undertaken by the railroad must also comply with all the technical requirements of the Uniform Construction Code (UCC) and construction documents must be prepared by a design professional licensed in the State of New Jersey. However, administrative delays are not permitted. Therefore, the railroad is allowed to proceed with the construction while the construction documents are being reviewed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

This direction is a result of a New Jersey Supreme Court decision, *The Village of Ridgefield Park v. New York Susquehanna & Western Railway Corp.*, which reconciled the overlapping jurisdictions of the UCC and the federal railroad. The case decided the extent to which the Federal Interstate Commerce Commission Termination Act preempted State regulation of railroads. In this case, the railroad had begun construction of a train maintenance facility in the Village of Ridgefield Park without seeking zoning or construction permits, or otherwise informing the municipality of its activities.

The Court determined that Ridgefield Park Village is able to enforce fire, health, plumbing, safety, and construction regulations that are applicable to the facility. The Court decided that the railroad may not deny the municipality access for reasonable inspection of the facility. The Court also determined that Ridgefield Park is not permitted to require the railroad to obtain construction permits. On the other hand, the railroad

BULLETIN

BULLETIN NO.

01-1

BULLETIN

must notify the municipality when it is undertaking an activity that would require another entity to obtain a permit. To a large extent, the Court's decision rested upon the Federal Surface Transportation Board's determination of the limited, preemptive effect of the federal law.

These same rules apply at Superfund sites. There are no permits, fees, or COs issued. The jurisdiction having authority is able to request construction documents and perform inspections. When undertaking an activity that would require another entity to obtain a permit, the entity undertaking the cleanup must provide construction documents and access for inspections upon request. All construction documents must be prepared by a design professional licensed in the State of New Jersey. The Superfund mitigation is allowed to proceed while the construction documents are being reviewed; administrative delays are not allowed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

For facilities that are federally owned or leased, the Federal Government performs the inspections. See Bulletin No. 93-2, entitled "Leased Structures," as to when a permit is required.